



July 20, 1999

Mr. Scott Fawcett
Legal Counsel
Open Records Division
Comptroller of Public Accounts
LBJ State Office Building
111 East 17th Street
Austin, Texas 78774

OR99-2043

Dear Mr. Fawcett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126151.

The Comptroller of Public Accounts (the "comptroller") received a request for the "'rule file' for franchise tax Rule 3.557 (Earned Surplus: Apportionment)." You assert that portions of the requested information are excepted from required public disclosure by sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 111.006(a)(2) of the Tax Code provides that information "secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer" is confidential. Tax Code § 111.006(a)(2). Chapter 171 of the Tax Code, which pertains to franchise tax, also has a similar confidentiality provision. *See* Tax Code § 171.206. We agree that most of the information you have marked under section 111.006 of the Tax Code is information obtained from a taxpayer. We disagree with your markings in one document, and we have marked the information in that document that is confidential under sections 111.006 and 171.206. Accordingly, you must withhold such information pursuant to sections 111.006(a)(2) and 171.206 of the Tax Code.

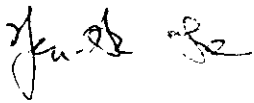
Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111

exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body.

Generally, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 at 4-5 (1993). Yet, where a document is a genuine preliminary draft that has been released or is intended for release in final form, factual information in that draft which also appears in a released or releasable final version is excepted from disclosure by section 552.111. Open Records Decision No. 559 (1990). However, severable factual information appearing in the draft but not in the final version is not excepted by section 552.111. *Id.* We agree with your section 552.111 markings; therefore, you may withhold such information under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 126151

Encl.: Marked documents

cc: Mr. John D. Christian
Foster, Malish & Hill, L.L.P.
1403 West Sixth Street
Austin, Texas 78703
(w/o enclosures)